

Application No.: 10/622,586
Art Unit: 3754

Attorney Docket No. 22394.00
Confirmation No. 3382

REMARKS

By the present amendment, Applicant has canceled Claims 1-5 and added Claims 6-13, which remain pending in the present application. Claim 6 is an independent claim.

Applicant herein requests an interview with the Examiner to discuss the merits of the present invention in accordance with MPEP § 713.01. Applicant respectfully requests that the Examiner consider the effect of the present amendment and defer taking any further action in this case until an interview can be arranged.

In the Office Action mailed April 6, 2004, the Examiner rejected Claims 1 and 5 under 35 U.S.C. § 102(b) as being anticipate by Racine (U.S. Patent No. 5,806,240). Claims 2-3 and 4 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Racine in view of Kirchner (U.S. Patent No. 2,551,842) and Dennie (U.S. Patent No. 2,831,610), respectively.

The cancellation of original Claims 1-5 and the introduction of new Claims 6-13 by the present amendment should serve to obviate the prior art grounds of rejection of record. Applicant will advance arguments hereinbelow to illustrate the manner in which the invention defined by the newly introduced claims is patentably distinguishable from the cited and applied prior art. Reconsideration of the present application is respectfully requested.

Independent Claim 6 has been introduced to more particularly define the subject matter in question. This newly presented independent claim sets forth a portable jug for watering plants that

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includes a container for holding water and a delivery pipe with a valve for regulating water flow. The container is defined as having a top with a central hole defined therein for use in filling the jug, a bottom and a surrounding side wall extending between the top and the bottom of the container, with the bottom including a downwardly sloped interior surface. The delivery pipe is claimed as being disposed in the side wall proximate the bottom of the container, and as having a pin-sized hole to allow trickling of water from the container for watering soil around the plants. New dependent Claim 7 sets forth the stepped configuration of the sloped interior surface of the container. New dependent Claims 8 and 9 respectively specifies that the jug further includes a handle extending over the top of the container and supports at the bottom for maintaining the jug in an upright position. New Claims 10 and 11 correspond substantially to original Claims 5 and 4, respectively. Dependent Claim 12 specifies the material out of which the container is fabricated and Claim 13 defines the capacity of the container. No new matter is involved by the limitations set forth by the newly presented claims since the same find clear support in the written description contained in the original disclosure. Applicant's claimed watering jug is of compact portable construction; its downwardly sloped interior bottom provides for complete drainage of water from the container; and the pin-sized opening in the delivery pipe allows for the steady trickling of water flow to the soil around the plant over an unattended period.

Applicant contends that the Racine reference relied upon of record, taken alone or in combination with Kirchner and/or Dennie, fails to describe or reasonably suggest a device having the combination of structural and functional features as defined by the present claims.

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The patent to Racine discloses a system for supplying dripping water to plant soil over an extended period of time, which comprises at least one water container having a discharging outlet and a support to hold the container in an upright position. The container is constructed such that similarly shaped containers can be vertically stacked to one another. The support is described as consisting of a upper container receiving element adapted to tightly engage the water discharging outlet of the container and a lower soil engaging element. A flexible tube is connected to a water passage in the upper element and a screw extending transversely through the support is operated to engage the tube for controlling the dripping rate of water from the container. In contrast to the watering system taught by Racine, Applicant's claimed device includes a delivery pipe that extends directly from the side wall of the container and has a pin-sized opening. In further distinction, a valve is incorporated in Applicant's delivery pipe for regulating water flow. Furthermore, there appears no mention in Racine that his container bottom may include a downwardly sloped interior surface for facilitating drainage as recited by the present claims and as disclosed under the instant specification. Moreover, Racine fails to disclose or suggest that his watering system may include a handle extending over the top of the container as set forth in dependent Claim 8.

In order to supplement the above noted deficiencies of the primary reference to Racine, the Examiner relies upon the secondary reference to Kirchner. The patent to Kirchner was relied upon by the Examiner to allegedly show "a container having a stepped up bottom/slopped bottom." However, Kirchner realistically discloses a beverage dispensing apparatus that is so structurally and

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functionally unrelated to the watering system taught by Racine that any assumption that one of ordinary skill in the art would likely be motivated to combine these references in the manner suggested by the Examiner is completely unfounded. Moreover, in order to modify Racine's container bottom to include the slopped bottom taught by Kirchner would require reconstruction of the support taught by the primary reference, which is an essential feature of Racine's invention.

Applicant notes that obviousness cannot be shown by combining the teachings of the prior art unless there is some teaching or incentive supporting the combination. *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984); *In re Geiger*, 815 F.2d at 688, 2 USPQ2d at 1278 (Fed. Cir. 1987). Further, the Federal Circuit in *In re Dembiczak*, 175 F.3d 994, 50 USPQ2d 1614 (Fed. Cir. 1999) deprecated rejections based upon "a hindsight-based obviousness analysis" and emphasized that what is required is a "rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references." The Court said that "the showing must be clear and particular" and that broad conclusory statements regarding the teaching of multiple references and "a mere discussion of the ways that the multiple prior art references can be combined to read on the claimed invention" is inadequate. Absent an explicit suggestion or teaching of the combination in the prior art references, there must be "specific...findings concerning the identification of the relevant art, the level of ordinary skill in the art, the nature of the problem to be solved, or any other factual findings that might serve to support a proper obviousness analysis".

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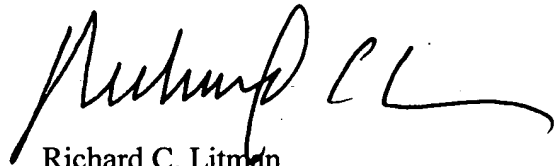
Applicant contends that one skilled in the art would not be motivated or guided by the prior art to combine these references in the manner suggested by the Examiner since the containers disclosed by the applied references are so structurally and functionally unrelated to one another. Moreover, Applicant further contends that even if the references were properly combinable, the above noted deficiencies of the primary reference to Racine are not remedied by the teachings afforded by the secondary reference to Kirchner. The same applies with regard to the patent to Dennie, which was relied upon merely to show that a removable cap for a dispensing tube is known in the art. Thus, one of ordinary skill in the art without the benefit of Applicant's own disclosure would not be capable of arriving at the presently claimed invention by combining the references in the manner suggested by the Examiner since none of references cited or applied of record realistically suggests the essential combination of features that forms the basis of the instant claims.. For at least these reasons, Applicant respectfully submits that new independent Claim 6 and corresponding new dependent Claims 7-13 are allowable over the prior art of record.

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For the foregoing reasons, Applicant respectfully submits that the present application is in condition for allowance. If such is not the case, the Examiner is requested to kindly contact the undersigned in an effort to satisfactorily conclude the prosecution of this application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Richard C. Litman', with a stylized flourish at the end.

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RCL:dht